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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Report of the Secretary-General on Human Rights and HIV/AIDS submitted in accordance with Commission resolution 1995/44

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Introduction

1. This report has been prepared in accordance with Commission on Human Rights resolution 1995/44, entitled "The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS)", of 3 March 1995 in which the Commission requested the Secretary-General to consult with Governments, relevant United Nations bodies, specialized agencies and non-governmental organizations with a view to keeping under review the protection of human rights in the context of the HIV/AIDS pandemic and to prepare for the consideration of the Commission at its fifty-second session a progress report on the development of a human rights component in the joint and co-sponsored United Nations programme on HIV/AIDS.

2. In the same resolution, the Commission requested the High Commissioner for Human Rights to consider appropriate methods by which to keep under continuous review the protection of human rights in the context of the HIV/AIDS pandemic and to undertake with the Centre for Human Rights, in cooperation with the joint and co-sponsored United Nations programme on HIV/AIDS, non-governmental agencies and other actors in the field, the task of elaborating guidelines on promoting and protecting respect for human rights in the context of HIV/AIDS, and to reflect in this regard on the possibility of organizing a second international expert consultation on human rights and AIDS.

3. In view of the above requests made by the Commission on Human Rights, the present report is divided into three parts. The first chapter reviews the progress in the development of a human rights component in the work plan of the joint United Nations programme on HIV/AIDS (UNAIDS). The second part deals with comments, information and materials received by the Secretary-General from Governments, relevant United Nations bodies, specialized agencies and non-governmental organizations with a view to keeping under review the protection of human rights in the context of the HIV/AIDS pandemic. In the third chapter, the report addresses the question of guidelines on promoting and protecting respect for human rights in the context of HIV/AIDS.

I. THE DEVELOPMENT OF A HUMAN RIGHTS COMPONENT WITHIN UNAIDS

4. The Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities have closely followed the establishment, in accordance with World Health Assembly resolution WHA146.37 and WHO Executive Board resolution EB93.R5, of a joint United Nations programme on HIV/AIDS (UNAIDS), which is scheduled to be fully functional on 1 January 1996.

5. Reasons such as a need for improved coordination of the response to the epidemic, its urgency and magnitude, its complex socio-economic and cultural dimensions, the denial and complacency still surrounding HIV, its transmission and, not least, the discrimination and human rights violations faced by those affected by HIV/AIDS have been the basis on which the programme has been built.

6. The Commission and its Sub-Commission have welcomed the developments in the establishment of the programme but have, at the same time, repeatedly urged that human rights concerns be incorporated into the strategies for implementing the new programme. In this context, the Sub-Commission, in its resolution 1993/31, requested the Secretary-General to report to the Sub-Commission at its forty-sixth session on the developments within the United Nations system of the possibility of establishing a joint United Nations programme on HIV and AIDS.

7. The Secretary-General's report to the Sub-Commission (E/CN.4/Sub.2/1994/8) indicated that, at the then early stage of development of the programme, a clear human rights perspective had not yet been included in the programme. The need for the promotion of human rights, ethics and law had, however, been recognized to be of critical importance for any effective HIV/AIDS strategy. Human rights, ethics and law are necessary both to reduce vulnerability to infection, as well as to enable people to cope with HIV/AIDS if affected. In his report the Secretary-General recommended that the Sub-Commission, the Commission and the Centre for Human Rights consider making suggestions on how to ensure the integration of a strong human rights component in the joint and co-sponsored HIV/AIDS programme.

8. In the framework of the above, it is welcomed that the Executive Director of UNAIDS recently addressed the issue of UNAIDS and human rights in an encouraging manner: "As part of its advocacy role, UNAIDS must keep the human rights perspective on the international and national agendas". 1/ The Executive Director further stated that "as part of our role of standard-setting and policy development we plan to tackle the many different and ever-changing legal, ethical and human rights issues posed by the epidemic. ... The ethical response to HIV/AIDS is the only response possible". 2/

9. The High Commissioner for Human Rights has been in contact with the Executive Director of UNAIDS to discuss possible ways in which the High Commissioner and the Centre for Human Rights could actively contribute to the building of a human rights component within UNAIDS and with a view to elaborating guidelines on human rights protection in the context of the epidemic.

10. The incorporation of such a human rights component into the UNAIDS strategic work plan has also been the concern of the Inter-Agency Advisory Group on HIV/AIDS (IAAG). At its 10th meeting in April 1995, IAAG requested the Executive Director of UNAIDS to take into account, inter alia, the suggestion to integrate a strong human rights component throughout the strategies and work of the programme.

11. In order to see how the above statements and recommendations could be practically implemented, this report has closely consulted the UNAIDS Strategic Plan 1996-2000 and the Proposed Programme Budget 1996-1997, both of which were approved and adopted by the Programme Coordinating Board (PCB) of UNAIDS in November 1995. The strategic plan sets out the programme's main

directions for the five-year period 1996-2000, subject to ongoing review, within which two programme priorities for UNAIDS are clearly identified as follows:

(a) To strengthen and support country capability in view of an expanded response to HIV/AIDS;

(b) To develop, advocate and implement "international best practice" most effective in responding to HIV/AIDS.

12. As stated in the programme budget document, the development, advocacy and implementation of "international best practice" comprises the principles, policies, strategies and activities that, according to collective international experience, are known to be the most effective in responding to HIV/AIDS. In addition to the two programme priorities, four "global HIV/AIDS goals" have been identified as follows:

(a) To reduce the transmission of HIV and sexually transmitted diseases (STD);

(b) To increase the quality and accessibility of treatment, care and support for people with HIV/AIDS;

(c) To reduce individual and collective vulnerability to HIV infection and AIDS;

(d) To reduce the adverse impact of HIV/AIDS on the health, livelihood and well-being of individuals and communities.

13. Whereas the protection and promotion of human rights is not explicitly mentioned in the four HIV/AIDS goals, it is noted with satisfaction that the strategic plan, in view of the epidemic's complex links with development and human rights issues, emphasizes the need to reduce vulnerability to infection and the adverse impact of the epidemic. The Executive Director of UNAIDS, in his statement before the Sub-Commission on Prevention of Discrimination and Protection of Minorities, outlined how the denial of human rights is linked to both vulnerability and impact.

14. Moreover, it is noted with satisfaction that one of the seven programme lines of the approach of UNAIDS within the area of "international best practice" is concerned with "governmental, human rights, legal and ethical systems". A total of US$ 3.7 million has been allocated to this budget line, constituting 11 per cent of the total budget allocation for the programme on "international best practice". 3/

15. Furthermore, the strategic plan calls for an expanded, multisectoral and sustainable response by the international community, linking prevention with care and support, and increasing the capacity of individuals and communities to cope with HIV/AIDS, all of which are key elements for ensuring the protection and promotion of human rights and fundamental freedoms in the context of HIV/AIDS. Thus, it should also be clearly understood that the effective achievement of the "four global HIV/AIDS goals" is conditional on the respect and promotion of all human rights in the relevant contexts.

16. The strategic plan also rightly underlines that legislation to prevent discrimination and marginalization and the protection of human rights should help address the underlying causes and consequences of the epidemic.

17. More in particular, the strategic plan has identified a number of core values and principles which are intended to become part of the conceptual underpinning of UNAIDS and to guide UNAIDS action on a day-to-day basis. These principles which are "inspired by growing consensus on ethical and human rights issues" 4/ are: long-term response; technical soundness; focus on vulnerability; support, not coercion; participation and partnership; national autonomy; complementarity and:

> "*Human rights*. Everyone is entitled to enjoy all human rights without discrimination, including discrimination based on actual or suspected HIV infection. Among those critical in the context of the HIV/AIDS epidemic are the rights to education, employment, health, travel, liberty, privacy and sexual self-determination, the right to equitable access to information and means to prevent infection, and the right to freedom from sexual violence and coercion." 5/

18. It is welcomed that, as outlined in the strategic plan and the programme budget document, the UNAIDS strategy recognizes that the promotion of sound governmental policies and the protection of human rights are critical to any effective HIV/AIDS strategy and necessary to reduce vulnerability to infection, as well as to enable people to cope with HIV/AIDS. Ethical principles should guide policy-makers, communities, individuals and researchers in their response to HIV/AIDS. Appropriate legal frameworks are necessary to empower the vulnerable and to protect those living with HIV/AIDS, as well as to support national AIDS programmes. It is, therefore, considered of primary importance that UNAIDS, in particular in identifying, developing and advocating "international best practice", use existing international human rights standards as a framework within which to guide "an ethically sound" response. In this connection, the guidelines referred to in section III will be of particular relevance.

19. Furthermore, under the budget line on "governmental, human rights, legal and ethical systems", UNAIDS is intending to:

(a) Promote government policies that will provide a supportive framework for effective and ethical responses to HIV/AIDS;

(b) Promote the human rights necessary to enable men, women and children to protect themselves from HIV infection;

(c) Promote those human rights necessary to reduce the impact of HIV/AIDS;

(d) Ensure ethical considerations in policy development, implementation and research;

(e) Destigmatize HIV/AIDS.

20. In its proposed programme budget 1996-1997, UNAIDS gives examples of concrete activities which it envisages to undertake under each of the above lines of action, which are elaborated below. 6/

21. It is recognized that government policies may make no reference to HIV/AIDS but actually have a significant impact on HIV/AIDS activities. UNAIDS seeks to understand the impact of these policies so that it can influence them through appropriate development of best practice, dissemination and advocacy. In this connection, UNAIDS is planning, inter alia, to assess how laws and practices governing marital, gender, family and property relations affect HIV/AIDS prevention, care and support and analyse how development initiatives affect and are affected by the HIV epidemic.

22. As already mentioned, UNAIDS in its strategic work plan has stated that failure to protect basic human rights increases the vulnerability of people to infection, first, by denying them the knowledge and means by which to avoid infection and, second, by denying them the ability to act on these. UNAIDS has, therefore, announced its intention to focus, in developing "international best practice", on people with HIV/AIDS, women, young people, ethnic and sexual minorities, the economically disadvantaged and other vulnerable populations, which is an important consideration bearing in mind that people belonging to these vulnerable groups are often victims of double discrimination in the context of HIV/AIDS.

23. In this connection, UNAIDS is proposing to promote legislation, services and education that will improve the status of disadvantaged groups, so as to empower them and reduce infection and to develop various promotional material on the relationship between human rights, ethics, law and HIV/AIDS prevention. UNAIDS could also consider to undertake research on identifying obstacles to the enjoyment of all human rights and fundamental freedoms by people living with HIV/AIDS with a view to promoting equity of access to education, information, health care and means of prevention.

24. With regard to reducing the impact of elimination of stigmatization of and discrimination against people living with HIV/AIDS, UNAIDS is planning to develop indicators to monitor the status of human rights and the degree of discrimination at the country level in the context of the epidemic. UNAIDS has also made a firm commitment to collaborate closely with United Nations human rights bodies and non-governmental organizations working in the field of human rights to ensure the inclusion of HIV/AIDS issues on their respective agendas.

25. In its strategy to ensure ethical considerations in policy development, implementation and research, UNAIDS, at the global level, has indicated that it would identify and establish an appropriate ethical review for UNAIDS-sponsored studies and research. UNAIDS has also indicated that it is exploring the possibility of establishing an independent council of human rights, ethics and law to advise UNAIDS, as was envisioned at the Paris AIDS Summit on World AIDS Day, 1 December 1994. 7/

26. In addition, the role of UNAIDS in advocacy, awareness raising and information dissemination will allow it to become a leading promoter of

human rights and non-discrimination in the field of HIV/AIDS if its actions are also in practice closely guided by the above-mentioned underlying values.

27. At the country level, UNAIDS intends to be active in, inter alia, "advocacy for political commitment, multi-sectoral involvement and the development of policies and environments conducive to an expanded response to HIV/AIDS, particularly in relation to human rights and dignity, and effective country-appropriate action". 8/ It is precisely the creation of such a supportive environment at the national and community levels which contributes to the elimination of human rights violations in the context of HIV/AIDS.

28. Furthermore, UNAIDS intends to help Governments to respond more effectively to legal and ethical issues by strengthening their ability to build these into their national response. UNAIDS will also work together with non-governmental organizations, AIDS service organizations and people living with HIV/AIDS, who are the critical spokespersons for those affected by the epidemic. In this context, UNAIDS is planning to support the establishment of legal and ethical subcommittees of national AIDS committees and to strengthen the capacity of national ethical review committees.

29. Furthermore, UNAIDS, with a view to destigmatizing HIV/AIDS, will undertake to support ongoing research on HIV/AIDS-related discrimination, stigmatization and denial, and will support advocacy by networks of people living with HIV/AIDS to overcome stigmatization and discrimination.

30. Generally speaking, it is crucial that human rights and ethical perspectives inform and guide ongoing HIV/AIDS prevention, care and research activities, as stated in the strategic plan. In addition, UNAIDS, when assisting in the building of institutional systems and settings, should ensure that people whose human rights have been violated in the context of the HIV/AIDS epidemic have access to a community support structure or national mechanisms which will provide appropriate restitution. In its programme budget plan, UNAIDS has indicated that it will indeed support legal and ethical subcommittees of national AIDS committees and legal and ethical networks at the national level for this purpose.

31. It is, furthermore, noted that UNAIDS, in its strategic plan, seeks "to influence", as distinct from "to do", "the shaping of social, legal and economic environments that combat discrimination and stigma and facilitate the societal integration of people living with and affected by HIV/AIDS" 9/ and "the integration of issues related to human rights and anti-discrimination into national and global strategies in relation to HIV/AIDS". 10/ UNAIDS should, however, go beyond simply "influencing" the creation of an environment which respects human rights and fundamental freedoms by assuming a strong and active advocacy and monitoring role so as to work with Governments towards the building and creation of this environment. In fact, respect for human rights should be integrated into all of UNAIDS policies and actions at the international and country levels, so that all of its activities contribute concretely to the creation of this supportive environment.

32. UNAIDS also intends to provide a forum for policy debate and consensus-building on important policy and technical issues relating to HIV/AIDS. The role of UNAIDS in facilitating discussions and negotiations

with the ultimate objective of finding ethically sound solutions and setting standards in these areas is of the utmost importance. This would include the consideration of issues such as travel restrictions; testing, including home-based testing and testing for the military; ethics in AIDS-related care and research; confidentiality and informed consent; as well as sexual and reproductive health rights in the context of HIV/AIDS and the socio-legal status of various marginalized groups in society.

33. With regard to monitoring and evaluation, it is to be commended that UNAIDS, in its strategic plan, puts forward that it will continue to refine prevention and care indicators developed under the auspices of the World Health Organization's Global Programme on AIDS and, in particular, expand the repertoire of indicators to include contextual elements considered critical to an expanded response to the epidemic, such as the linkages with development, poverty, equality, human rights and education.

II. WAYS TO KEEP UNDER REVIEW THE PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF HIV/AIDS

34. In accordance with paragraph 13 of Commission resolution 1995/44, the Secretary-General sent a note verbale dated 20 July 1995 to all Governments, relevant United Nations bodies, specialized agencies and non-governmental organizations, soliciting their comments on ways and means to keep under review the protection of human rights in the context of HIV/AIDS.

35. In this connection, the Secretary-General would like to report that replies were received from the following Governments: Andorra, Angola, Argentina, Armenia, Brazil, Croatia, Cyprus, Israel, Japan, Luxembourg, Morocco, Namibia, Netherlands, Philippines, Republic of Korea, Slovakia, Solomon Islands, Spain, Sweden, Turkey, Ukraine, Uruguay, Uzbekistan.

36. Replies were also received from the following United Nations bodies and agencies: Department of Humanitarian Affairs, Joint United Nations Programme on HIV/AIDS, Economic Commission for Europe, Economic Commission for Latin America and the Caribbean, Economic and Social Commission for Asia and the Pacific, United Nations Conference on Trade and Development, United Nations Development Programme, World Food Programme, United Nations Centre for Human Settlements (Habitat), Food and Agriculture Organization of the United Nations, World Health Organization, International Monetary Fund, World Meteorological Organization, International Fund for Agricultural Development, Helsinki Institute for Crime Prevention and Control affiliated with the United Nations and the International Criminal Police Organization.

37. The Organization of American States, the European Commission of the European Communities, as well as the European Commission on Human Rights also contributed.

38. The following non-governmental organizations also sent contributions: Asian Women's Human Rights Council, Association culturelle humanitaire mondiale, International Catholic Child Bureau, International Council of Nurses, Medical Women's International Association and Pax Romana.

A. At the national level

39. With regard to the replies received, it is noted that several Governments and organizations provided information in connection with paragraphs 2 to 7 of Commission resolution 1995/44, in which States are called upon inter alia, to ensure that their laws, policies and practices, including those introduced in the context of HIV/AIDS, respect human rights standards; take the necessary steps to ensure the full enjoyment of civil, political, economic, social and cultural rights of people living with HIV/AIDS; strengthen their efforts to advance the legal, economic and social status of women, children and vulnerable groups; and to undertake appropriate education and information measures to facilitate informed and responsible behaviour.

40. Most replies received, therefore, relate to measures taken at the national level to eliminate discrimination and promote and protect human rights in the context of HIV/AIDS. It is noted that some initiatives are being carried out or planned, as recommended by the Commission. Below are examples of such measures taken at the national level, according to information provided by Governments. It should, however, be emphasized that in view of the relatively small number of replies received, the information presented below should not necessarily be interpreted as representative of a general increase in activities relating to the protection of human rights in the context of HIV/AIDS.

41. Some Governments seem to consider that, as a matter of priority, the social and legal environment at the national level would have to be carefully reviewed so as create a "facilitating environment" in which human rights and fundamental freedoms in the context of HIV/AIDS are guaranteed. In this connection, it is noted that, in terms of relevant legislation, Governments reported that the issue of HIV/AIDS is only addressed in legislation concerning public health. Furthermore, most public health legislation is in fact outdated and/or inappropriately applied to HIV/AIDS. Few Governments have actually reviewed existing laws in the context of HIV/AIDS or implemented legislative provisions aimed specifically at protecting those concerned by the epidemic. However, several Governments, including that of Israel, did report that bills and draft legislative texts regarding respect for basic human rights in the context of the epidemic were under discussion and review by the respective legislative bodies.

42. On the other hand, some Governments, including that of the Netherlands, reported that extensive legislative protections, in particular relating to physical integrity, privacy and freedom from discrimination, including a constitutional ban on discrimination on the grounds of sexual orientation, were supplemented by public education campaigns on HIV/AIDS, as well as by activities at the international level such as cooperation with and funding of UNAIDS. The Governments of Argentina, the Republic of Korea and Ukraine cited existing legislation for the protection of human rights in the context of HIV/AIDS.

43. The Government of Morocco was of the opinion that, in view of the influential role of the family in society, the enhancement of the socio-economic conditions of the family at the national and international levels is necessary to reinforce tolerance and solidarity in the fight against

HIV/AIDS. In the same vein, the Government of the Philippines noted, inter alia, Senate Bill No. 1704, which recognizes and underscores the need for social reforms in norms, practices and institutional structures for the effective control of HIV/AIDS in the Philippines. The bill, if enacted into law, will set out basic policy on how to address HIV/AIDS-related issues "not only from a medical perspective but, more importantly, from a human rights vantage point" by addressing rights, such as the right to be informed and educated about HIV/AIDS, the right to privacy of persons with HIV/AIDS, the right of access to basic health services, the right to be protected against the disease; the right to employment; and the right to be protected against discriminatory acts such as denial of credit, insurance, education, the right to travel and to choose one's place of abode, and mandatory testing. In addition, the Philippine National AIDS Council, in its resolution No. 3 of October 1995, approved the creation of a Committee on Law and Ethics, "delineating simple measures to help create an enabling legal environment for the protection of rights of persons who may be aggrieved as a result of their health condition".

44. However, it is noted that the elimination of adverse effects on the full enjoyment of human rights of persons who are rendered more vulnerable to HIV-infection due to their disadvantaged economic, social or legal status, such as women, children, indigenous people, migrants and refugees, as well as men having sex with men, sex workers, intravenous drug users and others, has been addressed by only very few Governments, whereas this should constitute a priority concern at this national level. In this context, the Government of Spain stressed the vulnerability of women, children born of HIV/AIDS-infected mothers and intravenous drug users in particular.

45. In the context of groups particularly susceptible to HIV infection, the International Food and Agriculture Organization reported that it supports two non-governmental projects, the Uganda Women's Effort to Save Orphans and the Southern Province Household Food Security Programme in Zambia, which focus on orphaned children and female heads of households respectively. Both these sectors of the population are among the most vulnerable to HIV infection. While these projects do not provide assistance only to people living with HIV/AIDS, their effects may have a preventive effect by increasing the social and economic status of particularly vulnerable groups.

46. The Helsinki Institute for Crime Prevention and Control reported that within the framework of a study on prison health 11/ it was found that detained persons are also at a higher risk of HIV infection and that their human rights in the context of HIV/AIDS, such as the right to privacy and confidentiality, the right to information and access to adequate health services, are frequently denied.

47. Many replies, such as that of the Government of Croatia, underlined the importance of a multidisciplinary approach to the epidemic to achieve a sustainable response in terms of public health and the protection of human rights. In this connection, the Government of Sweden provided a concrete example of positive measures at the national level where Government and grass-roots organizations interact: the Noah's Ark-Red Cross Foundation, a non-governmental organization working as a national centre for HIV prevention

and care development. Apart from offering information, education, support and care to people with HIV/AIDS, people at risk and relatives and friends, the Foundation, in cooperation with the Government, county councils and municipalities, strives to educate people working in the health-care sector such as health-care staff, social workers, home care workers and prison staff.

48. Some Governments, such as the Governments of Andorra, Angola and Japan, reported that national information campaigns have been initiated to raise public awareness of respect for human rights in the context of the HIV/AIDS epidemic. In this connection, it is encouraging to note that, according to information provided by the Economic and Social Commission for Asia and the Pacific, the Governments of the region have committed themselves, in the Manila Declaration on the Agenda for Action on Social Development in the ESCAP Region, adopted at the Asian and Pacific Ministerial Conference in October 1994, to:

> "(a) promote behavioral change through public information and health, with special reference to high-risk groups; (b) provide support services for those already afflicted, ensuring that there is no discrimination against them; (c) ensure the safety of blood and blood products; and (d) eradicate sexual exploitation, especially of women and children who are most vulnerable".

49. It is also noted with concern that some Governments reported that due to financial and technical difficulties the monitoring of the pandemic at the national level is, in some cases, nearly impossible. For example, the Government of Armenia indicated that systematic nation-wide epidemiological investigations covering different socio-economic groups, including risk groups, have not been performed until the present due to such difficulties. In these conditions, without knowledge of the extent of the pandemic, the initiation of relevant and targeted pro-active measures to fight HIV is problematic. However, a new "National Concept of HIV/AIDS Control and Prevention", which foresees the creation of a National Centre on AIDS and Immunodeficiencies Control and Prevention, was approved by the Ministry of Health of Armenia in 1994.

50. At the regional level, information was received from the European Commission of the European Communities, which is currently funding projects aimed at combating discrimination in the field of HIV/AIDS in the framework of its "Europe against AIDS" programme. The activities of this programme focus notably on HIV/AIDS-related discrimination in the areas of employment, insurance, housing, education and health care.

51. The contribution of the United Nations Development Programme's HIV and Development programme referred to networks on HIV and ethics, law and human rights within the framework of which UNDP is engaged in promoting and sustaining non-governmental and community-based responses to the epidemic at the local, national and regional levels. The purpose of these networks at the national level is to bring together the expertise and experience of the relevant social actors, including people living with HIV/AIDS, in order to share perspectives and through dialogue identify a way forward.

B. At the international level

52. As already mentioned, only very few of the contributions received focused on ways and means to keep under review the protection of human rights in the context of the HIV/AIDS pandemic at the level of international organizations. In this respect, the Commission has repeatedly, and most recently in its resolution 1995/44, called upon the Special Rapporteur on the sale of children, child prostitution and child pornography, the Committee on the Rights of the Child, the Commission on the Status of Women and the Working Group on Contemporary Forms of Slavery to pay sustained attention to the risk which the continuing exploitation of children, including child prostitution, poses for the transmission of HIV.

53. The Commission also invited the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and other similar bodies to give full attention to monitoring States parties' compliance with their commitments under the relevant human rights instruments regarding the rights of people living with HIV/AIDS, their families and associates, or people presumed to be at risk of infection.

54. In this context, the representative of the World Health Organization/Global Programme on AIDS (WHO/GPA) stated in his intervention at the fifty-first session of the Commission on Human Rights that WHO/GPA depended upon the Commission on Human Rights and other United Nations bodies, including the Sub-Commission, relevant working groups, special rapporteurs and treaty-based bodies, to keep AIDS-related human rights issues under review and to engage States in dialogue on those matters. Consequently, in communications addressed to the Chairpersons of the Committee on the Rights of the Child, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination Against Women (CEDAW), WHO/GPA pointed out that the committees, as they perform their role in overseeing compliance with the respective conventions, can make a critical contribution to addressing HIV/AIDS human rights issues by: elaborating HIV/AIDS-related standards under the Conventions and increasing understanding of and commitment to these human rights standards in relation to HIV/AIDS among Governments.

55. The communications sent by WHO/GPA to the various Chairpersons detailed HIV/AIDS-related issues that arise under relevant articles of the respective conventions and proposed possible questions that might be raised by committee members concerning these issues, with a view to strengthening the respective reporting guidelines and to assisting the committee in focusing on this particular thematic issue. It is particularly welcomed that the communication addressed to the Committee on Economic, Social and Cultural Rights was issued as a working paper (E/C.12/1995/WP.1) and made available to all participants at the twelfth session of the Committee in April 1995.

56. At this point, it should be mentioned that CEDAW, in its General Recommendation No. 15, has already recommended that States parties increase public awareness of the risk of HIV infection for women and children, give special attention to the rights and needs of women and children and to factors that make them especially vulnerable to HIV infection, ensure the active

participation of women in care and prevention, and include in their reports information on the situation of women and on action taken to prevent specific discrimination against women in response to HIV/AIDS.

57. In addition to the treaty monitoring bodies, extraconventional human rights monitoring mechanisms, such as special rapporteurs, representatives and working groups, have also been requested by the Commission to consider, in their reports, the relevance of HIV/AIDS to their particular mandate and to integrate its consideration into their work.

58. In this respect, the annual reports of the Special Representative of the Secretary-General on Cambodia, Justice Michael Kirby are a positive example to be followed. In his last report to the Commission (E/CN.4/1995/87 and Add.1), the Special Representative recommended, in connection with the full implementation of the right to health, that highest priority should be given to providing information and protection with respect to the spread of HIV/AIDS to the Cambodian people and, in particular, to women and groups at risk, such as sex workers and military and police personnel. In addition, the Special Representative made a number of action-oriented and very concrete proposals including, inter alia, the establishment of free testing for HIV and venereal diseases, offering confidentiality and counselling; consideration of legal regulation concerning the use of needles for injection; enhancing the role of the media and communications in disseminating information on HIV/AIDS; and collecting and monitoring empirical data on issues such as HIV testing of military personnel and of the blood supply.

59. The report of the Special Representative of the Secretary-General on Cambodia reflects one way in which special rapporteurs and representatives can integrate human rights and HIV/AIDS in the discharge of their mandates.

60. Furthermore, the Commission has also called upon the Sub-Commission to keep the issue of AIDS-related discrimination under continuous review under all relevant agenda items, as well as within the work of its relevant working groups and special rapporteurs. As the Executive Director of UNAIDS pointed out in his statement to the Sub-Commission at its forty-seventh session, the Sub-Commission plays an important role in the elaboration of normative issues related to HIV/AIDS. For example, the Sub-Commission and the Commission have both confirmed that, under international law, discrimination is prohibited on the basis of "other status", which includes health status, which in turn includes HIV/AIDS. In the same statement it was suggested that further consideration should be given to the nature of States' obligations to protect people from discrimination by private entities and individuals, since it is in that context in which much of the HIV/AIDS-related discrimination occurs. The Sub-Commission could also, within its mandate, further explore the content of the scope and applicability of public health limitations on human rights, building, inter alia, on the outcome of the International Consultation on human rights and AIDS, organized by the Centre for Human Rights in July 1989. 12/

61. In its contribution to the request for information by the Secretary-General, UNDP outlined the need for human rights treaty monitoring bodies, special rapporteurs and representatives to understand the nature of the epidemic and the public health rationale for the respect of human rights

in the context of HIV/AIDS. UNDP, therefore, called for monitoring of compliance with human rights standards in the context of HIV/AIDS as an integral part of the work of both conventional and extra-conventional mechanisms. Such monitoring would be most effective when it is complemented, at the country level, by a strong technical cooperation programme on human rights education.

62. UNDP further recommended that technical cooperation and advisory services programmes in the field of human rights should include, as an integral element, in the initial needs assessment stages as well as in programming and support activities, the consideration of the implications of the current and predicted impact of the HIV/AIDS epidemic.

63. In this connection, and with a view to making the work of the Centre for Human Rights in the field of HIV/AIDS fully complementary to that of UNAIDS, both WHO and UNDP have recommended the making available of resources to establish a full-time, qualified, experienced and adequately funded HIV/AIDS focal point. Furthermore, in its contribution UNDP's HIV and Development programme proposed that, given the nature and tremendous threat posed by the HIV pandemic and the particular importance of human rights in an effective and sustainable response, there is good reason to consider the appointment of a special rapporteur on HIV/AIDS to report on the scope of relevant abuses and measures to be taken.

64. Another important way to support a continuous monitoring of human rights in the context of HIV/AIDS at the international level is to enable non-governmental organizations working in the field of human rights and AIDS service organizations to provide information on HIV/AIDS-related human rights concerns to the relevant United Nations human rights bodies. In this respect, WHO/GPA is drafting a manual for AIDS service organizations which it is hoped, will increase the capacity of these organizations to become important advocates on HIV-related human rights issues at the international level and help the relevant United Nations human rights mechanisms to keep themselves informed of these issues and to keep them under continuous review. WHO has also sponsored people living with HIV/AIDS to participate at a session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, an activity which will continue under UNAIDS.

III. GUIDELINES ON HUMAN RIGHTS AND HIV/AIDS

65. At its fifty-first session, the Commission on Human Rights, in its resolution 1995/44, requested the High Commissioner for Human Rights to undertake with the Centre for Human Rights, and in cooperation with the joint United Nations programme on HIV/AIDS, non-governmental organizations and other actors in the field, the task of elaborating guidelines on promoting and protecting respect for human rights in the context of HIV/AIDS, and to reflect in this regard on the possibility of organizing a second international expert consultation on human rights and AIDS. The Secretary-General was requested to report to the Commission at its fifty-second session on the status of the guidelines.

66. The call for such guidelines was based on a recommendation contained in the report of the Secretary-General to the Commission at its fifty-first session (E/CN.4/1995/45, para. 135), which stated that "the development of such guidelines or principles could provide an international framework for discussion of human rights considerations at the national, regional and international levels in order to arrive at a more comprehensive understanding of the complex relationship between the public health rationale and the human rights rationale of HIV/AIDS. In particular, Governments could benefit from guidelines that outline clearly how human rights standards apply in the area of HIV/AIDS and indicate concrete and specific measures, both in terms of legislation and practice, that should be undertaken".

67. In this respect, the representative of WHO, in his statement to the Commission at its fifty-first session, welcomed the recommendation to elaborate guidelines because, although sufficient international human rights standards are in existence, their specific application to HIV/AIDS issues is little understood or implemented. It is, therefore, crucial that States receive more guidance and encouragement in their activities to combat HIV/AIDS-related discrimination as violations of human rights.

68. In its reply the UNDP HIV and Development programme stated that it anticipated that the guidelines would be intended to assist Governments in moving from the broad human rights principles of existing standards to preparing specific policies with regard to HIV/AIDS-related concerns, such as discrimination in employment and accommodation, access to medical treatment and questions of confidentiality. Moreover, it was pointed out that the guidelines should emphasize the process of policy development, focusing on principles of "inclusion" and "respect" rather than being limited to a general reaffirmation of international legal principles, such as the freedom of movement and the freedom from discrimination. According to UNDP, the guidelines should also clearly spell out the public health rationale for the respect of all human rights in the context of HIV/AIDS.

69. It should be noted that at the expert consultation on AIDS and human rights organized by the Centre for Human Rights and WHO/GPA in July 1989, the future elaboration of guidelines to assist policy makers and others in compliance with international human rights standards regarding law, administrative practice and policy was proposed. 13/

70. As follow-up to the recommendations of the consultation and of the Commission, the High Commissioner for Human Rights has entered into dialogue with the Executive Director of UNAIDS with a view to organizing a second international expert consultation on human rights and HIV/AIDS to elaborate guidelines on human rights and HIV/AIDS. A number of technical preparatory meetings have been held between the Centre for Human Rights and WHO/GPA/UNAIDS for the organization of such a consultation, scheduled to be held in mid-1996.

71. It has been agreed that the principal purpose of a second consultation would be to draft and adopt guidelines on promoting and protecting human rights in the context of HIV/AIDS. The elaboration of such guidelines must take place with the widest possible consultation among all relevant sectors of society and as a result of a thorough exchange of views. In this connection, UNDP in its reply urged that people living with HIV/AIDS and other groups most

affected be involved in the process of elaborating guidelines. It is only through the representation and empowerment of such groups in policy-making processes that such efforts can be productive and effective.

72. UNDP concluded, therefore, that in order to maximize the relevance and effectiveness of a second international expert consultation on human rights and HIV/AIDS, people living with HIV/AIDS and other affected groups must be represented and heard during the preparatory process and at the consultation itself. In addition, UNDP recommended that the expert consultation examine the impact of all forms of abuses of human rights on the capacity of individuals and societies to respond effectively to the pandemic.

73. In view of the above, it is envisaged that the purpose of the guidelines would be to provide Governments and others with:

(a) General principles, as found in international human rights instruments, which should guide the response to HIV/AIDS, including the development and implementation of HIV/AIDS-related legislation, policies and practices; and

(b) A descriptive framework for concrete, positive and action-oriented strategies and measures for the promotion and protection of human rights and ethics in the context of HIV/AIDS.

74. In the light of the above, the principal users of the guidelines have been identified as government legislators and policy makers, as well as officials in national AIDS programmes and in relevant governmental departments and ministries, such as health, education and the interior. Non-governmental organizations working in the areas of HIV/AIDS and human rights, networks of people living with HIV/AIDS, HIV/AIDS-related legal and ethical networks and educators should also benefit from the guidelines.

75. The contribution received from the non-governmental organization Pax Romana provided some concrete suggestions for pro-active measures at the national level to be considered in the elaboration of guidelines. The document will be made available to the expert consultation. Similarly, the Phnom Penh Declaration on "Women and Human Rights and the Challenge of HIV/AIDS", adopted in November 1994 at a conference organized by the Asian Women's Council, offers some useful and concrete suggestions for cooperation at the national level between Governments and grass-roots activists in addressing human rights issues in the context of HIV/AIDS and will also be made available at the consultation.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. The development of a human rights component within UNAIDS

76. It is to be commended that the basic principles of promotion and protection of human rights and non-discrimination seem to have been well-integrated in most aspects of the strategic plan 1996-2000 of UNAIDS. Furthermore, the programmatic lines, as identified in the programme budget, do provide some indications of the concrete and action-oriented activities

that UNAIDS intends to carry out, both at the global and the country levels, to ensure that the promotion and protection of human rights becomes an integral part of its strategy.

77. Naturally, the practical implementation of these principles and proposed activities in all spheres of action undertaken by UNAIDS remains to be followed closely. It is strongly recommended that, in order to facilitate implementation, UNAIDS ensure the creation of a human rights focal point within its secretariat. The focal point would, in direct cooperation with the High Commissioner for Human Rights and the Centre for Human Rights, be instrumental in ensuring that all UNAIDS policies and programmes are "ethically sound" and that UNAIDS as the principal advocate in the field of HIV/AIDS engages in public information and awareness-raising campaigns for the elimination of discrimination and respect for all human rights.

78. It is, therefore, urged that UNAIDS ensure sufficient resources, both financial and human, to implement in particular activities aimed at developing human rights, ethical and legal structures. In this connection, the training of all staff, including country programme advisers and members of theme groups, in human rights and ethics is recommended. This would facilitate the incorporation of HIV/AIDS-related human rights concerns into the activities of the theme groups and of national AIDS programmes. In this connection, it could be envisaged that UNAIDS, through the theme group on HIV/AIDS and with the country concerned, would solicit technical cooperation and advisory services from the Centre for Human Rights.

79. UNAIDS might also wish to identify and draw upon the experience of "human rights partners/contacts" at the international, national and community levels for monitoring, services and general support. To this end, collaboration with United Nations human rights mechanisms, national human rights institutions and non-governmental organizations is strongly encouraged. Furthermore, it is essential that UNAIDS identify ways and means to support and empower AIDS service organizations, legal and ethical networks and networks of people living with AIDS so that they are also enabled to take up HIV/AIDS-related human rights concerns.

80. It is also recommended that UNAIDS take the necessary measures to explore further the timely establishment of an independent council for high-level advocacy and monitoring and the identification of its mandate. Furthermore, UNAIDS, in its advocacy, standard-setting and monitoring role, should actively ensure that HIV/AIDS-related human rights and ethical concerns are effectively and practically integrated into all its ongoing activities, as well as in those of its co-sponsors.

B. Ways to keep under review the protection of human rights in the context of HIV/AIDS

1. At the national level

81. In the national context, the replies received indicated that some Governments are increasingly aware of certain priority measures that need to be taken to ensure a multidisciplinary approach to achieve a sustainable response to the HIV/AIDS epidemic. Some Governments also recognized that only

in a supportive social, economic and legal environment is it possible to implement any effective HIV/AIDS strategy to reduce vulnerability to infection and, at the same time, ensure the protection and promotion of the human rights of those affected.

82. In order for these objectives to be achieved at the national level, it is crucial to strengthen the capacity and participation of groups, leaders and representatives of people affected by HIV/AIDS in establishing programmes, drafting policies and strategies and other activities in the field of human rights and HIV/AIDS at the regional and international level.

83. Measures that Governments should undertake in this connection include the review or, if necessary, the drafting of legislation in the field of public health and in other relevant areas, thereby contributing to the creation of a supportive legislative framework. Such legislation would include the areas of information; education; anti-discrimination, including disability; the status of women, including marital, property and custody laws; as well as laws that affect men having sex with men, commercial sex workers and their clients and drug use.

84. Governments are also called upon to incorporate HIV/AIDS-related issues into the work of national human rights institutions, commissions and ombudsmen. National AIDS programmes should devote increased resources and activities to human rights, legal and ethical issues, including the establishment of legal and ethical subcommittees of national AIDS committees.

85. In addition, Governments are called upon to provide financial and political support to activities of non-governmental organizations, AIDS service organizations, ethical and legal networks and persons living with HIV/AIDS who work in the field of human rights and HIV/AIDS. Finally, the promotion of human rights education and ethics training for relevant professionals, particularly in the field of health care, as well as the establishment of ethical review committees for HIV/AIDS-related research, are encouraged.

2. At the international level

86. At the international level, not only is the future role of UNAIDS in the promotion and protection of human rights in the field of HIV/AIDS of the utmost importance, but the existing international human rights machinery can also play a significant role in monitoring compliance with human rights standards in the context of HIV/AIDS.

87. It is, therefore, recommended that, at the next meeting of chairpersons of treaty bodies and at that of special rapporteurs, representatives and working groups of the Commission on Human Rights, a discussion take place on concrete ways to keep under review the protection of HIV/AIDS-related human rights in relation to the respective mandates. It is strongly urged that the Sub-Commission at its forty-seventh session also address this question with respect to its own mandate and provide the Commission at its fifty-third session with concrete recommendations in this regard. The presence of UNAIDS at these meetings would ensure the possibility of a constructive dialogue with a view to finding practical solutions.

In addition, UNAIDS could provide written materials to all relevant human rights monitoring machineries on the relevance of HIV/AIDS within their particular mandates.

88. Furthermore, treaty monitoring bodies which have not already done so could issue the communications addressed to them by the World Health Organization on HIV/AIDS-related issues relevant to their respective mandates as official documents and ensure their distribution to all States parties for use in connection with their reporting obligations. Treaty-based bodies are also encouraged to consider the relevance of HIV/AIDS in the development of general comments.

89. Finally, it is recommended that the Centre for Human Rights maximize its capacity to address the issue of human rights in the context of HIV/AIDS by ensuring that one full-time Professional staff member is assigned to this mandate. This would also enable the monitoring of the effective integration of HIV/AIDS-related human rights issues in all activities of the Centre for Human Rights, including in the area of technical cooperation and advisory services.

C. Guidelines on human rights and HIV/AIDS

90. The organization of an international expert consultation, with the widest possible participation of all relevant and interested sectors, is of particular importance in ensuring the elaboration of practical and action-oriented guidelines. It is also recommended that persons living with HIV/AIDS and non-governmental organizations, AIDS service organizations and community-based organizations are closely involved in the process of drafting and adopting the guidelines on human rights and AIDS because the guidelines, to have maximum impact, should, inter alia, evolve from and reflect the experience of people living with HIV and AIDS and groups most affected by the epidemic.

91. In view of the important strategic objective of UNAIDS to advocate political commitment to an expanded response to HIV/AIDS, in particular in relation to human rights, it is recommended that the expert consultation, when considering guidelines on human rights and HIV/AIDS, bear in mind that these guidelines need to be an essential and practical tool for countries to be used, inter alia, in designing, coordinating and implementing national HIV/AIDS policies and strategies.

92. It is also recommended that the Secretary-General inform the Commission on Human Rights at its fifty-third session of the outcome of the second expert consultation on human rights and HIV/AIDS.

93. Finally, the Commission is called upon to reflect on ways and means by which to ensure an effective follow-up to the guidelines on human rights and AIDS in terms of monitoring their implementation.

Notes

1/ P. Piot, "UNAIDS and Human Rights", in World Aids Day Newsletter, WHO/GPA, 1995, No. 2, p. 7.

2/ Ibid. See also statement by the Executive Director of UNAIDS at the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-seventh session (August 1995).

3/ Joint United Nations programme on HIV/AIDS (UNAIDS), Proposed Programme Budget 1996-1997, October 1995.

4/ Joint United Nations Programme on HIV/AIDS (UNAIDS), Strategic Plan 1996-2000 (UNAIDS/PCB(2)/95.3), p. 6.

5/ Ibid., p. 7.

6/ Proposed Programme Budget 1996-1997, op. cit., pp. 45-47.

7/ Statement by the Executive Director of UNAIDS at the Tenth Inter-Agency Advisory Group on AIDS, Geneva, April 1995. See also Piot, op. cit., p. 7.

8/ UNAIDS/PCB(2)/95.3, op. cit., p. 11.

9/ Ibid., p. 15.

10/ Ibid., p. 16.

11/ K. Tomaševski, Prison Health: International Standards and Practices in Europe, Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, Publication Series No. 21, Helsinki, 1992.

12/ See Report of an International Consultation on AIDS and Human Rights, Geneva, 26-28 July 1989 (HR/PUB/90/2).

13/ Ibid.